JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Family and Juvenile Law: Transfers to Tribal Court under the Indian Child Welfare Act

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.483 and 5.590; revise *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) and *Notice of Appeal - Juvenile* (form JV-800)

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Tribal Court–State Court Forum
Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
June 24, 2015

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Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and Tribal Court-State Court Forum (forum) propose amendments to the California Rules of Court and revisions to Judicial Council forms in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772), which amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian child from the jurisdiction of the juvenile court to a tribal court. The proposed rule amendments and form revisions are also in response to the decision of the Court of Appeal, First Appellate District in *In*

re M.M. (2007) 154 Cal.App.4th 897, which implicates an objecting party's right to appeal a decision granting a transfer to a tribal court.

Recommendation

The committee and forum recommend that effective January 1, 2016 the Judicial Council:

1. Amend rule 5.483 to make use of the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) mandatory rather than optional; add a requirement that the transfer order include matters required by section 827.15 of the Welfare and Institutions Code; add a subsection requiring an advisement that any party wishing to appeal an order transferring a case to tribal court must file their appeal before the transfer is finalized;

2. Amend rule 5.590 to require an advisement that an appeal of an order granting a transfer of an Indian child custody proceeding involving an Indian child to tribal court must be taken before the transfer finalizes and that a party may ask for a stay of the order to ensure that parties are aware of the requirements;

3. Revise Judicial Council *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) by making it mandatory rather than optional; adding places to put the information required by *Welfare and Institutions Code* 827.15; and adding an advisement concerning appellate rights as follows:

   > Rule 5.483 says if you object to the order for transfer to a tribal court and wish to file an appeal, (1) you may ask the juvenile court to stay the transfer order and (2) you must file the appeal before the transfer to tribal jurisdiction is finalized; and

4. Revise Judicial Council *Notice of Appeal—Juvenile* (form JV-800) to refer to section 305.5 of the Welfare and Institutions Code.

The text of the amended rules and the new and revised forms are attached at pages 6–11.

Previous Council Action

In 2006, the Legislature enacted Senate Bill 678 (Stats. 2006 ch. 838; Ducheny) (SB 678), which incorporated various provisions of the federal *Indian Child Welfare Act* (25 U.S.C. 1901 – 1963) into the California Family Code, Probate Code and Welfare and Institutions Code. To implement SB 678, the Judicial Council adopted comprehensive ICWA rules and forms, including rule 5.483 concerning transfers to tribal court, effective January 1, 2008. This rule was amended only once since 2008, and only for technical changes, specifically to delete statutory references. Rule 5.590, concerning the advisement of rights to review juvenile cases governed by Welfare and Institutions Code sections 300, 601, and 602, was amended and renumbered effective July 1, 2010. The rule was first adopted as rule 1435 effective January 1, 1990 and previously amended

effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1999. In 2007, it was amended and renumbered as rule 5.585 effective January 1, 2007.

Rationale for Recommendation

The existing rule governing transfers of cases under the *Indian Child Welfare Act* to tribal court, rule 5.483, contains limited information on the procedures to transfer a case to tribal court, what information must be provided to the tribal court, and the parties' appellate rights. The current proposal provides more information in these areas and responds to two developments which have occurred since the enactment of rule 5.483.

In 2007, the Court of Appeal, First Appellate District held that once a transfer from state court to tribal court is finalized, the decision to transfer is not appealable because the California Court of Appeal has no power over the tribal court to which the case has been transferred.[1]

The Legislature recently enacted Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460), which amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian child from the jurisdiction of the local state court to a tribal court. In particular, SB 1460 sets out certain requirements concerning the contents of orders and the information which must be provided when a child's case is transferred from a California juvenile court to a tribal court. This change brings California law into alignment with federal requirements under title IV-E of the Social Security Act designed to ensure continuity of title IV-E eligibility when a case transfers from state court to tribal court.

Comments, Alternatives Considered, and Policy Implications

The proposal effectively addresses two separate issues: (1) the requirement under SB 1460 to provide a tribal court with specific information and documentation when a case governed by the *Indian Child Welfare Act* is transferred and (2) the appellate jurisdiction issues addressed in the *In re M.M.* decision.

As originally drafted and circulated for comment, in response to the *In re M.M.* decision, the proposal would have created a reduced timeline for filing an appeal combined with an automatic stay of the finalization of an order transferring a case to tribal court to give an objecting party a defined period of time in which to appeal and request a stay. The procedure suggested in the proposal received a number of negative comments and has been substantially revised in light of those comments as discussed in more detail below.

[1] *In re. M.M.* (2007) 154 Cal.App.4th 897.

External Comments

This proposal was circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court appointed special advocate programs, and other juvenile and family law professionals. In addition the proposal was circulated to tribal advocates, tribal leaders and others with a particular interest in tribal issues. Seven individuals or organizations provided comment: one agreed with the proposal, one agreed if modified, three disagreed with the proposal, and two expressed no position but included comments. A chart with the full text of the comments received and the committee's responses is attached at pages 12–18.

All of the substantive comments received on the proposal related to appellate issues. None of the commentators raised issues relating to the changes implementing SB 1460. One of the commentators who disagreed with the proposal and one who agreed if modified suggested that the shortened time frame for appeal and the unique procedure created a trap for the unwary and rather than protecting objecting parties' right to appeal would, in practice, undermine those rights. Two of the commentators, the Pechanga Band of Luisenio Indians and the California Indian Legal Services who disagreed with the proposal, objected that the automatic stay would delay permanency for Indian children, broaden appellate rights, and was inconsistent with the *Indian Child Welfare Act*, California statutes implementing the *Indian Child Welfare Act* and other governing law. They urged the Judicial Council to defer action on this proposal pending the Bureau of Indian Affairs adoption of new regulations governing the *Indian Child Welfare Act*. While this proposal was pending, on February 25, 2015, the Bureau of Indian Affairs (BIA) published new *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* (new guidelines) which replace and supersede the guidelines issued in 1979.[2] On March 20, 2015, the BIA proposed new regulations governing ICWA.[3]

In response to these comments, the proposal was substantially revised to eliminate both the shortened time for appeal of an order granting a transfer of a case governed by the *Indian Child Welfare Act* to tribal court and the automatic stay of the finalization of such an order. Instead, the proposal now requires an advisement to the parties that any appeal of an order granting a transfer to tribal court must be taken before the transfer has been finalized and that a party that intends to appeal may ask for a stay of the transfer order.

Alternatives

The committee and forum had originally considered establishing an alternative time frame for appeals of orders transferring cases governed by the *Indian Child Welfare Act* to tribal court. In

[2] The new guidelines may be found at http://www.bia.gov/cs/groups/public/documents/text/idc1-029447.pdf.
[3] The proposed regulations may be found at http://www.bia.gov/cs/groups/public/documents/text/idc1-029629.pdf .

light of the concerns raised by the various commentators, the committee and forum decided that the better alternative would be to provide the parties with an advisement that any appeal must be taken prior to the transfer being finalized.

The committee and forum are aware that the new BIA guidelines and proposed regulations contain provisions that appear to conflict with both California case law and the Welfare and Institutions Code, which might require additional rule and form changes, including those governing transfers to tribal court (Cal. Rules of Court, rule 5.483; and form ICWA-060) as well as changes regarding the nature and timing of inquiry, content of notice, timing and nature of active efforts, considerations in applying placement preferences, and a number of other areas. The committee and forum considered whether to defer action on this current proposal in light of the new guidelines and proposed regulations. However, given that it may take several years for any such changes in California statutes to be finalized, the committee and forum decided that the following benefits outweighed waiting: (1) parties are entitled to information to understand how to object to a transfer and preserve their appellate rights; (2) state courts will have a clear procedure to follow when issues of transfer arise; and (3) tribal courts will receive all of the information and documentation that they are entitled to under SB 1460 as mandated by state and federal law.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operations impacts should be minimal, because even without these changes, state courts are required to notify the parties of their appellate rights and transfer these cases to tribal courts absent good cause. Existing council rules and notice form can be used, however, they do not give the parties the information needed to comply with statutory and case law. There are no associated costs, but rather there are potential savings, which will result when cases are promptly and properly transferred from state court to tribal court.

Attachments and Links

1. Cal. Rules of Court, rules 5.483 and 5.590, at pages 6–7
2. Judicial Council forms, ICWA-060 and JV-800, at pages 8–11
3. Chart of comments, at pages 12–18
4. Attachment A: *In re M.M.* (2007) 154 Cal.App.4th 897
5. Attachment B: Senate Bill 1460 (Stats. 2014, ch. 772), http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1451-1500/sb_1460_bill_20140929_chaptered.html

Title 5. Family and Juvenile Rules

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 2. Indian Child Welfare Act

Rule 5.483. Transfer of case

(a)–(f) *** * ***

(g) Order on request to transfer

(1) The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:

(A) All of the findings, orders, or modifications of orders that have been made in the case;

(B) The name and address of the tribe to which jurisdiction is being transferred;

(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;

(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and

(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.

(h) Advisement when transfer order granted

When the court grants a petition under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b) and rule 5.483 transferring a case to a tribal court and one of the parties has objected to that transfer, the court must advise the objecting party that any appeal to the order for transfer to a tribal court must be made before the transfer to tribal jurisdiction is finalized. If any party

intends to appeal the order for transfer to a tribal court that party may ask for a stay of the transfer order.

~~(h)~~ (i) Proceeding after transfer

* * *

Advisory Committee Comment

Once a transfer to tribal court is finalized, the state court lacks jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897). Subsection (h) is added to preserve an objecting party's right to appeal a transfer order.

Division 3. Juvenile Rules

Chapter 5. Appellate Review

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a)–(b) * * *

(c) Advisement requirements for appeal of order to transfer to tribal court

When the court grants a petition under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b) and rule 5.483 transferring a case to a tribal court and one of the parties has objected to that transfer, the court must advise the objecting party that an appeal of the order must be filed before the transfer to tribal jurisdiction is finalized. Any party intending to appeal an order transferring a case to tribal court may ask for a stay of the transfer order.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	RELATED CASES *(if any):*

1. Child's name: Date of birth:

2. a. Date of hearing: Time: Dept.: Room:

   b. Persons present:

   - ☐ Child
   - ☐ Child's attorney
   - ☐ Probation officer/social worker
   - ☐ Deputy county counsel
   - ☐ Tribal representative: _____ Name
   - ☐ Parent *(name):*
   - ☐ Parent *(name):*
   - ☐ Guardian
   - ☐ Deputy district attorney
   - ☐ Parent's attorney
   - ☐ Parent's attorney
   - ☐ CASA
   - ☐ Other:

3. The court has read and considered the
   - ☐ ICWA-50, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
   - ☐ Other *relevant evidence (specify):*

4. ☐ The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.

5. **THE COURT FINDS AND ORDERS** under ☐ Family Code, § 177(a); ☐ Probate Code, § 1459.5(b); ☐ Welfare and Institutions Code, § 305.5; ☐ 25 U.S.C. § 1911(a) (Exclusive Jurisdiction)

   a. ☐ The child's case is ordered transferred to the jurisdiction of the tribe listed below:
   Name of tribe:
   Address:
   City, state, zip code:
   Telephone number:

   b. ☐ Physical custody of the child is transferred to a designated representative of the tribal court listed below:
   Name:
   Title:
   Address:
   City, state, zip code:
   Telephone number:

   c. ☐ The case is being transferred from a juvenile court and all of the findings and orders or modifications of orders that have been made in the case are attached.

   d. ☐ The case is being transferred from a juvenile court and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.

   e. ☐ The case is being transferred from a juvenile court and all originals contained in the court file must be transferred to the tribal court with copies maintained by this court.

CASE NAME:	CASE NUMBER:

f. ☐ The petition to transfer is denied because one of the following circumstances exist:

(1) ☐ One or both of the child's parents opposes the transfer.
Name of opposing parent:

(2) ☐ The child's tribe has informed this court that it does not have a tribal court or other administrative body as defined in 25 U.S.C. § 1903.

(3) ☐ The tribal court or other administrative body of the child's tribe declines the transfer.

g. ☐ The petition to transfer is denied because good cause exists not to transfer the case.

(1) ☐ Name of opposing party: has submitted information or evidence in writing to the court and all parties.

(2) ☐ Petitioner has had the opportunity to provide information or evidence in rebuttal.

(3) ☐ The party opposing the transfer has established that good cause not to transfer the proceeding exists as follows:

(a) ☐ The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

(b) ☐ The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding. The notice complied with:

☐ Family Code section 180 or
☐ Probate Code section 1460.2 or
☐ Welfare and Institutions Code section 224.2.

(Note: The fact that a party waited until after reunification efforts failed and reunification services were terminated is not good cause to deny transfer.)

(c) ☐ The Indian child is over 12 years of age and objects to the transfer.

(d) ☐ The parents of the child, over five years of age, are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

(e) ☐ *Other (specify):* _____

(4) ☐ The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.

6. ☐ The court grants the petition to transfer and an objecting party that intends to seek appellate review of the transfer order is advised that they must file a written notice of appeal before the transfer to tribal jurisdiction is finalized. An objecting party that intends to seek appellate review of the transfer order is further advised that they may request a stay of the transfer order.

7. ☐ Proof that tribe has accepted transfer is attached and jurisdiction is terminated.

8. ☐ Hearing is set for *(Date):* *(Time):* *(Dept.):*
to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date:

_____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- Rule 5.483 says if you object to the order for transfer to a tribal court and wish to file an appeal, (1) you may ask the juvenile court to stay the transfer order and (2) you must file the appeal before the transfer to tribal jurisdiction is finalized.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name and address and phone number of person to be contacted *(if different from appellant):*

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

4. Items 5 through 7 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. Jan1, 2016]

Cal. Rules of Court, rule 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ child's tribe
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):* _____
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
   ☐ Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code section *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

	Commentator	Position	Comment	Committee Response
1.	Hon. Raymond J. Ikola Associate Justice California Court of Appeal, Fourth Appellate District, Division Three	N	I am concerned that this proposal attempts to accomplish much too much in an effort to avoid the result of *In re M.M.*, a case now some eight years old, and involving a relatively rare event. In particular, the seven day time limit for filing the notice of appeal is a trap for the unwary, despite the new requirement that the court advise the parties of the shortened time. Despite best intentions, the advisement may be missed, or the parties may not remember it. For decades, California lawyers have been accustomed to a 60-day appeal period for both civil and criminal appeals. The proposed shortened appeal period will be an aberration. Under this proposal, a lawyer is just as likely to miss the shortened appeal period, resulting in a loss of appellate jurisdiction, as to miss the opportunity to request a stay from the trial court. This proposal attempts too much and will replace one problem with another. We should not attempt to lawyer a case by rule.	In response to this comment, the proposal has been revised to delete the seven day time limit for filing a notice of appeal and instead to require an advisement to the parties that any appeal of an order granting transfer must be filed before the transfer is finalized and that the parties may request a stay of the transfer order if they intend to file an appeal.
2.	Superior Court of California, County of Orange Blanca Escobedo Principal Administrative Analyst Family Law & Juvenile Court	NI	**Does the proposal appropriately address the stated purpose?** The proposal's stated purpose is clear for juvenile court. However, we request clarification/impact of *In re M.M.* to family court.	The rule 5.483 applies to family court cases governed by the Indian Child Welfare Act (ICWA). ICWA applies to any state court proceeding involving an Indian child that may result in a voluntary or involuntary foster care

	Commentator	Position	Comment	Committee Response
			Is it necessary to address the appellate issues discussed in the *In re M.M.* decision through an amendment to the rules and forms? We recommend expanding on the impact of *In re M.M.* as it applies to appellate rules and forms. **Is the time for filing an appeal of an order for transfer to tribal court appropriate?** We are concerned about the appeal time being too short. It may not allow counsel/party enough time to file an appeal. We also need clarification on the appeal time period. CRC reflects *7 court days **after service** of the copy of order* and the JV-800 notice reflects *within 7 court days or before the transfer to tribal court is finalized*. To minimize confusion, we recommend using similar language on the rule of court and notice. Also, should courts add the standard five days to allow for mailing in addition to the seven court days, for a total of twelve days? **Should this proposal proceed at this time or should it be deferred in light of the new *Bureau of Indian Affairs Indian child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* and the possibility that further changes may be**	placement; guardianship placement; custody placement under Family Code section 3041. No reply necessary in light of the revisions being made to the proposal. In response to this and other comments, the proposal has been revised. The proposal no longer shortens the time for appeal.

	Commentator	Position	Comment	Committee Response
			required? We recommend deferring this proposal to align with other changes introduced by the Bureau of Indian Affairs Indian Child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. We recommend the following changes to the proposed forms: • **Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (ICWA-060)** o We recommend making this a mandatory form. o Item 5(e) should also reflect or electronic copies for courts that maintain electronic records. o Item 6 is related to item 5(a), so we recommend moving it right after item 5(a). This will avoid the advisement from being missed. o Recommend adding verbiage to clarify item #8 applies to juvenile court. • **Notice of Appeal – Juvenile (JV-800)** Last bullet in the Notice box should reflect, "….appeal within 7 court days *from the date the order is made* or before…"	Consideration was given to deferring the proposal however the proposal implements legislation and is not inconsistent with the new BIA Guidelines nor proposed regulations. The proposal makes this form mandatory. Not all tribal courts may have the capacity to accept electronically transferred documents. Consideration was given to moving item 6. However, item 6 relates to appellate advisement rather than the order on transfer itself. Accordingly it has been left in place. Item 8 applies to any court in which the case governed by the Indian Child Welfare Act arises – juvenile, family or probate. This proposal has now been revised so that there is no longer a 7 day appeal time.

	Commentator	Position	Comment	Committee Response
3.	Pechanga Band of Luisenio Indians, Hon. Mark Macarro, Chairman (Riverside County)	N	These comments are submitted on behalf of the Pechanga Band of Luisenio Indians, a federally-recognized and sovereign Indian nation, in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and revisions to the associated court forms. This proposal creates a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions to transfer a case, it must be transferred absent good cause. The current proposal is inconsistent with the intent and spirit of the ICWA in delaying such transfers. The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical	In response to this and other comments, the proposal has been revised so that it no longer creates a 12 court day delay in finalizing a transfer to tribal court. Instead an objecting party will be advised that they must file an appeal before the transfer has finalized and that they may request a stay of the order if they intend to appeal.

	Commentator	Position	Comment	Committee Response
			custody from state court to tribal court. The proposal would broaden appellate rights around transfers to tribal court beyond what is allowed by statute. Although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. The proposal creates appellate rights that do not currently exist. At present, a party must simply request a stay of the proceedings and/or immediately file a writ of supersedeas. (See In re M.M. (2007) 154 Cal.App.4th 897.) The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties -- an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The	The proposal has been significantly revised to address this concern, and now reflects current practice, consistent with the M.M. decision, that a party may request a stay and immediately file an appeal. The committee and forum are aware that the new Bureau of Indian Affairs guidelines and proposed regulations contain provisions that appear to conflict with both California case law and the Welfare and Institutions Code and which might require additional rule and form changes, including those governing transfers to tribal court

	Commentator	Position	Comment	Committee Response
			proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. *(Mississippipi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra; In re jack C., III* (2011) 192 Cal.App.4th 967, 982.)	(Cal. Rules of Court, rule 5.483; and form ICWA-060) as well as changes regarding the nature and timing of inquiry, content of notice, timing and nature of active efforts, considerations in applying placement preferences, and a number of other areas. The committee and forum considered whether to defer action on this current proposal in light of the new guidelines and proposed regulations. However, given that it may take several years for any such changes in California statutes to be finalized, the committee and forum decided that the following benefits outweighed waiting: (1) parties are entitled to information to understand how to object to a transfer and preserve their appellate rights; (2) state courts will have a clear procedure to follow when issues of transfer arise; and (3) tribal courts will receive all of the information and documentation that they are entitled to under SB 1460 as mandated by state and federal law. The proposal was circulated for comment to a Listserve of tribal leaders, tribal court judges and tribal advocates. Also, the proposal is jointly recommended by two advisory committees; one of these, the forum, has members who are tribal court judges. All comments received have been considered by the forum, and in response to those comments, substantial revisions have been made to address the concerns raised.

	Commentator	Position	Comment	Committee Response
4.	California Indian Legal Services, Delia Parr, Directing Attorney , Eureka Office (Statewide Tribal organization with offices in Bishop, Escondido, Eureka and Sacramento)	N	These comments are submitted in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and, revisions to the associated court forms. This proposal would create a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions	In response to this comment and others, the proposal has been revised to eliminate the 12 court day stay on completing a transfer to tribal court. See response to comments of the Pechanga tribe above.

	Commentator	Position	Comment	Committee Response
			to transfer a case, it *must* be transferred absent good cause. Of great importance, recently-published federal ICWA guidelines and pending federal regulations clearly define the good cause exception and give greater deference to tribal jurisdiction. The current proposal is inconsistent with the intent and spirit of the ICWA in delaying such transfers. The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical custody from state court to tribal court. For example, in one recent CILS case, a newborn was detained at birth by a county child welfare agency. The child's Indian tribe had been following the mother and planned to detain at birth, but since the hospital called the county at birth and not the tribe, the county detained before the tribe had a chance. The tribe had determined that placement with the maternal grandparents, who had been with the baby in the hospital since birth, was appropriate. However, one of the grandparents had a criminal conviction that would not allow county placement without an exemption. The tribe therefore sought a transfer to tribal court, which fortunately was granted. If the proposed amended Rules of Court were in place, however, this could have meant an unnecessary delay of as much three weeks during which the	

	Commentator	Position	Comment	Committee Response
			baby would either remain in the hospital or be placed in stranger care. This situation is likely to occur time and again under the proposed rule, since hospital staff as mandated reporters contact counties at birth, not tribes. This avoidable situation of putting Indian children in stranger care will not be limited to newborns, though. It could potentially occur anytime a child is detained by a state agency and a tribe is seeking jurisdiction, since counties and tribes are often at odds over appropriate placements. The proposal would broaden appellate rights against transfers to tribal court beyond what is allowed by statute. When a statute contemplates a particular appeal process for a certain proceeding, it usually directs the creation of a Rule of Court on point. The current statutes regarding transfers to tribal court do no such thing. And although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. At present, parties opposing a transfer to tribal court must request a stay of the proceedings and/or immediately file a writ of supersedeas. (See *In re M.M.* (2007) 154 Cal.App.4th 897.) Even if there were statutory authority to alter the current process, the clarified federal guidelines regarding transfers to tribal court make any additional time to decide whether to oppose a transfer	

	Commentator	Position	Comment	Committee Response
			unnecessary. The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties – an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. When the federal regulations are finalized, state legislation will likely be needed. That legislative update may look much like SB 678 in 2006, which codified the ICWA into state law. This is an issue that would properly be addressed at that time, in order to avoid piecemeal fixes that confuse both parties and courts.	See response to comments of Pechanga Tribe

	Commentator	Position	Comment	Committee Response
			In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra*; *In re Jack C., III* (2011) 192 Cal.App.4th 967, 982.)	above.
5.	Superior Court of California, County of San Diego, Mike Roddy, Executive Officer	AM	This proposal would delay the effective date of an order transferring jurisdiction to a tribal court and would significantly shorten the time to appeal from such an order. Juvenile appeals and writs are governed by CRC 8.400 - 8.474. The time to file an appeal is set by a rule of court, not by a statute. Therefore, a new rule of court shortening the time to file an appeal would be appropriate. The proposed new rule (8.418) says 7 court days after service of a copy of the order being appealed, the ICWA-060 says 7 court	The proposal had been revised to no longer shorten the time for appeal of an order granting transfer to tribal court. The proposal has been revised and no longer includes these provisions

	Commentator	Position	Comment	Committee Response
			days after the date of this order, and the JV-800 just says within 7 court days. They need to be consistent. The two forms also introduce ambiguity by citing the 60-day rule, which must be clarified and/or corrected as well.	
6.	Superior Court of California, County of Los Angeles	NI	On brief perusal it appears these Invitations to Comment [including SPR-15-27] deal with Dependency and Delinquency matters which have little or no bearing on Family Law. No comments are provided. If staff believe these issues relate to Family Law please advise.	Rule 5.483 applies to cases in family court governed by the Indian Child Welfare Act.
7.	Orange County Bar Association, Ashleigh Aitken, President	A	No substantive comments.	No response required.

Court of Appeal, First District, Division 5, California.
In re M.M., a Person Coming Under the Juvenile Court Law.
Humboldt County Department of Health & Human Services, Plaintiff and Appellant,
v.
Michael T., Defendant and Respondent;
Karuk Tribe of California et al., Interveners and Respondents;
M.M., Appellant.

No. A115771.
Aug. 28, 2007.
Rehearing Denied Sept. 20, 2007.
Review Denied Nov. 28, 2007.

Background: County department of health and human services initiated juvenile dependency proceeding, and Indian tribe filed notice of intervention and request to transfer jurisdiction to tribal court. The Superior Court, Humboldt County, No. JV050028,Marilyn B. Miles, J., set aside prior termination-of-parental-rights order and transferred the case to tribal court pursuant to the Indian Child Welfare Act (ICWA). Child appealed.

Holding: Addressing an issue of first impression, the Court of Appeal, Needham, J., held that juvenile court's order transferring the dependency proceeding to the tribal court deprived California courts of jurisdiction over the case and, thus, precluded any appeal from the transfer order.

Appeal dismissed.

West Headnotes

[1] Indians 209 133

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k133 k. In general. Most Cited Cases

Indians 209 134(3)

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k134 Dependent Children; Termination of Parental Rights
209k134(3) k. Jurisdiction; state or tribal court. Most Cited Cases

Indian Child Welfare Act (ICWA) creates concurrent but presumptively tribal jurisdiction in the case of Indian children not domiciled on the reservation; on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of good cause, objection by either parent, or declination of jurisdiction by the tribal court. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b).

[2] Indians 209 103

209 Indians
209I In General
209k102 Status of Indian Nations or Tribes
209k103 k. In general. Most Cited Cases

Indian tribes have a status higher than that of

states; they are subordinate and dependent nations possessed of all powers except to the extent that they have expressly been required to surrender them by the superior sovereign, the United States.

[3] Indians 209 220

209 Indians
209V Government of Indian Country, Reservations, and Tribes in General
209k219 Tribal or Indian Courts
209k220 k. In general. Most Cited Cases

Although an Indian tribal court is located within the geographic boundaries of the state, it is not a California court; it is the court of an independent sovereign.

[4] Removal of Cases 334 95

334 Removal of Cases
334VI Proceedings to Procure and Effect of Removal
334k95 k. Transfer of jurisdiction and effect of removal in general. Most Cited Cases

The removal of an action to federal court necessarily divests state and local courts of their jurisdiction over a particular dispute; thus, a removal petition deprives the state court of jurisdiction as soon as it is filed and served upon the state court. 28 U.S.C.A. § 1446.

[5] Indians 209 134(3)

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k134 Dependent Children; Termination of Parental Rights
209k134(3) k. Jurisdiction; state or tribal court. Most Cited Cases

Infants 211 2065

211 Infants
211XIV Dependency, Permanent Custody, and Termination of Rights; Children in Need
211XIV(E) Proceedings
211k2065 k. Jurisdiction and venue. Most Cited Cases
(Formerly 211k196)

Juvenile court lost jurisdiction over child's dependency proceeding once the case was transferred to Indian tribal court pursuant to the Indian Child Welfare Act (ICWA) and the tribal court accepted jurisdiction. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b).
See 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 524; Cal. Jur. 3d, Delinquent and Dependent Children, § 150.

[6] Indians 209 134(3)

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k134 Dependent Children; Termination of Parental Rights
209k134(3) k. Jurisdiction; state or tribal court. Most Cited Cases

Infants 211 2402

211 Infants
211XIV Dependency, Permanent Custody, and Termination of Rights; Children in Need
211XIV(K) Appeal and Review
211k2402 k. Dismissal and mootness. Most Cited Cases
(Formerly 211k247)

Court of Appeal had to dismiss for lack of jurisdiction a child's appeal from juvenile court's order transferring his dependency proceeding to Indian tribal court pursuant to the Indian Child Welfare Act (ICWA), as Court of Appeal had no power to issue orders to the tribal court and, thus, could not provide effective relief to child. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b).

[7] Indians 209 241(1)

209 Indians
209VI Actions
209k238 Jurisdiction
209k241 State Courts
209k241(1) k. In general. Most Cited Cases

Unlike the federal courts, California courts do not have jurisdiction to engage in even limited review of an Indian tribal court's decisions.

[8] Courts 106 530

106 Courts
106VII Concurrent and Conflicting Jurisdiction
106VII(D) Tribal Courts and Other Courts
106k530 k. In general. Most Cited Cases

"Concurrent jurisdiction" describes a situation where two or more tribunals are authorized to hear and dispose of a matter and the choice of which tribunal is up to the person bringing the matter to court.

[9] Courts 106 530

106 Courts
106VII Concurrent and Conflicting Jurisdiction
106VII(D) Tribal Courts and Other Courts
106k530 k. In general. Most Cited Cases

That two courts have concurrent jurisdiction does not mean that both courts may simultaneously entertain actions involving the very same subject matter and parties; rather, a grant of concurrent jurisdiction means that litigants may, in the first instance, resort to either court indifferently.

[10] Courts 106 530

106 Courts
106VII Concurrent and Conflicting Jurisdiction
106VII(D) Tribal Courts and Other Courts
106k530 k. In general. Most Cited Cases

The exercise of jurisdiction by one court ordinarily will preclude the exercise of jurisdiction by other courts having concurrent jurisdiction.

[11] Indians 209 134(3)

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k134 Dependent Children; Termination of Parental Rights
209k134(3) k. Jurisdiction; state or tribal court. Most Cited Cases

Infants 211 2065

211 Infants
211XIV Dependency, Permanent Custody, and Termination of Rights; Children in Need
211XIV(E) Proceedings
211k2065 k. Jurisdiction and venue. Most Cited Cases
(Formerly 211k196)

Although the Indian Child Welfare Act (ICWA)

grants state and tribal courts concurrent jurisdiction to adjudicate proceedings for foster care placement or termination of parental rights to Indian children not domiciled or residing within the reservation of the Indian child's tribe, this does not mean that after a state court transfers a case to tribal court under the ICWA, the state court retains the power to make orders affecting the Indian child. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b).

[12] Indians 209 134(3)

209 Indians
209III Protection of Persons and Personal Rights; Domestic Relations
209k132 Infants
209k134 Dependent Children; Termination of Parental Rights
209k134(3) k. Jurisdiction; state or tribal court. Most Cited Cases

Infants 211 2393

211 Infants
211XIV Dependency, Permanent Custody, and Termination of Rights; Children in Need
211XIV(K) Appeal and Review
211k2385 Perfection; Notice and Effect of Appeal
211k2393 k. Supersedeas or stay of proceedings. Most Cited Cases
(Formerly 211k242)

To preserve right to appeal order of the juvenile court transferring child's dependency proceeding to an Indian tribal court pursuant to the Indian Child Welfare Act (ICWA), child's counsel could have sought an immediate stay of the transfer order pending child's exhaustion of his appellate remedies. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b); West's Ann.Cal.C.C.P. § 917.7.

****275** Interim County Counsel, Ralph Faust, Marilyn Dutkus, Deputy County Counsel, for Plaintiff and Appellant Humboldt County Department of Health & Human Services.

Deborah Dentler, for Appellant M.M.

Linda K. Harvie, for Defendant and Respondent Michael T.

California Indian Legal Services, Samuel D. Hough, for Intervener and Respondent Karuk Tribe of California.

Law Office of Gradstein & Gorman, Seth F. Gorman, Half Moon Bay, for Interveners and Respondents Marilyn R. and Jason M.

NEEDHAM, J.

***901** This appeal from an order transferring a case from a California juvenile court to an Indian tribal court pursuant to the Indian Child Welfare Act of 1978 (ICWA), title 25 United States Code section 1901 et seq., raises a question of first impression in California—does the transfer of a juvenile dependency case from state court to tribal court pursuant to title 25 United States Code section 1911(b) deprive the California courts of jurisdiction over the dependency case and thus preclude any appeal from the transfer order? We conclude that it does.

M.M. (Minor) appeals from an order of the Humboldt County Juvenile Court that transferred his dependency proceeding to the Karuk Tribal Court. The Humboldt County Juvenile Court transmitted its case files to the tribal court, the tribal court accepted jurisdiction, and it declared Minor a ward of that court. Because no party requested a stay of the transfer order prior to completion of the transfer, we hold that the California court lost all power to act in the matter upon completion of the transfer of the case. We further hold that as a California appellate court

we can provide no effective relief to Minor, because we have no power to order the courts of a separate sovereign—the Karuk Tribe—to return the case to the state courts. We must therefore dismiss this appeal for lack of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

Minor was born on January 24, 2005. On February 10, 2005, the Humboldt County Department of Health and Human Services (the Department) filed a petition alleging that Minor was a dependent child within the meaning of ****276**Welfare and Institutions Code section 300, subdivisions (b), (g), and (j). The petition noted that Minor "may be a member of, or eligible for, membership in a federally recognized Indian tribe."

Minor's mother, Roseanna A., is an enrolled member of the Hoopa Valley Tribe. Roseanna identified Chester M. as Minor's father, and Chester signed a declaration of paternity at the hospital the day after Minor's birth; Chester is also listed as the father of the child on Minor's birth certificate. Chester M. is an enrolled member of the Hoopa Valley Tribe. On February 15, 2005, the juvenile court found that Chester M. was Minor's presumed father. Minor was later placed in foster care with Roseanna A.'s relative, Marilyn R. and her partner, Jason M.

***902** The Department's investigation indicated that Minor was reported to be eligible for membership in the Hoopa Valley, Karuk, Yurok, and Pomo tribes. In February 2005, a Department social worker spoke with a representative of the Hoopa Valley Tribe, who indicated that the tribe did not wish to intervene in the case at that time.[FN1] On March 17, 2005, the Department sent a "Notice of Involuntary Child Custody Proceedings for an Indian Child" (Judicial Council form JV–135) to the Hoopa Valley Tribal Council, the Karuk Tribe of California, and the Yurok Tribe, as well as to the Office of the Regional Solicitor of the Department of the Interior.

FN1. In state court proceedings for the foster care placement of, or termination of parental rights to, an Indian child, ICWA grants the Indian child's tribe "a right to intervene at any point in the proceeding." (25 U.S.C. § 1911(c).)

At the March 29, 2005 jurisdictional hearing, the juvenile court sustained amended jurisdictional allegations. The court found that Minor was a child described in subdivisions (b) and (j) of Welfare and Institutions Code section 300. Although the juvenile court found that notice had been given as required by law, the court left open the question whether notice to the tribes had been adequate. On April 18, 2005, the juvenile court declared Minor a dependent of the court and ordered reunification services for both mother and the presumed father.

On September 22, 2005, the Humboldt County Superior Court received a notice of intervention from the Hoopa Valley Tribe. At the six-month review hearing five days later, the juvenile court granted the request to intervene and continued the review hearing, which was eventually calendared for November 21, 2005. The six-month status review report noted that Minor had applied for enrollment in the Hoopa Valley Tribe but that the eligibility determination process was not yet complete.

At the contested six-month review hearing on November 21, the court terminated reunification services to both Roseanna A. and Chester M. It then set a permanency planning hearing under Welfare and Institutions Code, section 366.26 for March 20, 2006. The court further ordered the Department to submit its report by February 21, 2006.

At a hearing on February 28, the juvenile court noted that it had not received the Department's report. At the same hearing, however, the court and all coun-

sel confirmed receipt of a letter dated February 22, 2006, from respondent Michael T. Michael T. is an enrolled member of the Karuk Tribe. In the letter, Michael T. explained that he had been told that he was Minor's father and expressed a desire to retain his parental rights. He also requested a ***903** blood test to establish his paternity over Minor. The Department ****277** opposed the request for a blood test, since Chester M. had already been declared Minor's presumed father. The juvenile court did not rule on the request at the hearing.

On March 10, 2006, the Karuk Tribe sent a letter to the Department's social worker stating that the tribe had no records for Minor and that the tribe would support the Department and the Hoopa Valley Tribe in the adoption of Minor. At the time this letter was sent the Karuk Tribe had not been provided with notice that Michael T. had contacted the juvenile court claiming to be Minor's father.

At the March 20, 2006 permanency planning hearing, Michael T. appeared and addressed the court.[FN2] He stated that he "would like to establish a paternity test (sic)." Counsel for Minor and Chester M. argued that Michael T. lacked standing to request a paternity test because only the presumed father could request such a test. The juvenile court made no explicit ruling on Michael T.'s request, stating only that "the presumed father is Chester M [.]. By law, there's only one presumed father." The court then proceeded to terminate the parental rights of both Roseanna A. and Chester M., as well as the rights of "any and all other persons claiming to be the mother or father of the child."

> FN2. Although the record does not contain Michael T.'s date of birth, all parties agree that he was a minor at the time of the permanency planning hearing.

In May 2006, the Hoopa Valley Tribe performed a paternity test by drawing blood from Minor, Roseanna A., and Michael T. The test showed a 99.99 percent probability that Michael T. was Minor's father. The Karuk Tribal Council subsequently approved a resolution finding that Minor was eligible for membership in the Karuk Tribe and was the natural child of a member of the Karuk Tribe. The resolution also authorized the tribe's intervention in Minor's dependency proceeding. On July 21, 2006, the children's division of the tribal court of the Karuk Tribe of California entered an "ORDER ACCEPTING JURISDICTION AND AWARDING TEMPORARY CUSTODY." In the order, the tribal court found that Michael T. was Minor's biological father and that Minor was eligible for membership in the tribe. The tribal court also "accepted" the transfer of jurisdiction of the case from the Humboldt County Juvenile Court.[FN3] Its order further provided that ***904** "effective upon transfer from the California Superior Court, [Minor] is adjudged a temporary Ward of the Children's Division of the Karuk Tribal Court with temporary legal custody awarded to the Karuk Tribe of California Department of Child and Family Services."

> FN3. This acceptance of jurisdiction was premature. At the time the tribal court entered its order, no request for transfer of jurisdiction had yet been filed in the Humboldt County Juvenile Court. The tribal court therefore issued a second order on July 24, 2006, noting that it would take no action until the transfer request was heard in Humboldt County Juvenile Court.

Shortly thereafter, on July 28, 2006, the Karuk Tribe filed in Humboldt County Juvenile Court a notice of intervention and a request to transfer jurisdiction to the Karuk Tribal Court. On August 1, 2006, the tribe filed in the juvenile court a petition to invalidate the court's earlier termination of parental rights. The following day, the Hoopa Valley Tribe filed a notice of withdrawal of intervention. In its

notice, the Hoopa Valley Tribe stated that Minor was not eligible for membership in the Hoopa Valley Tribe.

On August 7, 2006, Minor's case was calendared for a hearing on the intervention by the Karuk Tribe and the tribe's ****278** motion to transfer jurisdiction.[FN4] The juvenile court inquired whether anyone disputed that Minor was the biological child of a Karuk Tribe member. Neither counsel for the Department nor counsel for Minor offered to refute the blood test results showing that Michael T. was Minor's father. The juvenile court then found that "it does appear from the state of the record, and no one has shown otherwise or objected otherwise, that—that the child's tribe is the Karuk Tribe since he is the biological child of a member of the Karuk Tribe, Mr. T [.], by the record before it, the evidence before the Court, and is either a member of or eligible for membership in the Karuk Tribe." The juvenile court therefore confirmed the Karuk Tribe's right to intervene in the case.

> FN4. The juvenile court also noted that Marilyn R. and Jason M., who had earlier been granted de facto parent status, had filed a request for prospective adoptive parent designation.

At the continuation of the hearing on August 8, the court appointed counsel for Michael T. That same day, Michael T. filed a parental notification of Indian status, stating that he was a member of the Karuk Tribe and that Minor was a member or eligible for membership in the tribe. Michael T. also filed a statement regarding paternity in which he stated that he had established paternity through a blood test and through the July 21, 2006 judgment of paternity by the children's division of the Karuk Tribal Court. On August 16, Michael T. joined the Karuk Tribe's motion to transfer the case to tribal court.

After various continuances of the hearing, the juvenile court heard argument on a number of motions on September 13, 2006. The juvenile court granted the Karuk Tribe's motion to transfer and entered a written order ***905** stating that "[o]n 9–13–06, this matter be transferred to the Children's Division of the Tribal Court of the Karuk Tribe of California pursuant to the Indian Child Welfare Act, [title] 25 U.S.C. § 1911(b)." Although counsel for Minor was present at the hearing, she did not request a stay of the transfer order. Pursuant to title 25 United States Code section 1914,[FN5] the juvenile court also set aside its earlier order terminating parental rights. The court further denied without prejudice the de facto parents' request for prospective adoptive parent designation, denied a motion by Minor's counsel for paternity testing, and granted Michael T.'s motion for visitation. The court directed the clerk's office to complete the transfer to the Karuk Tribal Court and continued the matter to September 25, 2006, to confirm that the case had been transferred.

> FN5. That provisions states: "Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections [1911], [1912], and [1913] of this Act." (25 U.S.C. § 1914.)

At the hearing on September 25, 2006, the juvenile court confirmed that the file had been delivered to the Karuk Tribal Court on September 18, 2006, and had been accepted by the tribal court on the following day. At the same hearing, the juvenile court also relieved all counsel in this matter. On October 25, 2006, the juvenile court signed a form JV–550 ("Juvenile Court Transfer Orders"). (See Cal. Rules of Court, rule 5.605(f).) That order states, "The child

is an Indian child under the Indian Child Welfare Act and the child's case is transferred to the Karuk Tribe [T]ribal Court, the child's tribe, under 25 U.S.C. section 1911." The order ****279** was filed in Humboldt County Superior Court on October 27, 2006.

On October 2, 2006, counsel for Minor filed a notice of appeal from the juvenile court's September 13, 2006 order setting aside the termination of parental rights. Although the notice of appeal identified only the order setting aside the termination of parental rights, Minor's brief on appeal challenges a number of other rulings by the juvenile court, including the order transferring the case to the Karuk Tribal Court.

This court appointed appellate counsel for Minor on December 1, 2006. Six months later, on May 15, 2007, Minor's counsel filed a petition for writ of supersedeas/prohibition/habeas corpus and a request for a temporary stay ***906** of a Karuk Tribal Court hearing set for May 18, 2007. On May 18, 2007, we denied the petition for writ of supersedeas/prohibition and the request for temporary stay. We severed Minor's habeas corpus claims from the remainder of the petition and further ordered the appeal expedited.[FN6] On June 7, 2007, Minor's counsel filed a second petition for writ of supersedeas and request for stay. We denied this petition by order dated June 12, 2007.

> FN6. In the separate petition for writ of habeas corpus, Minor has raised a number of claims regarding his alleged right to a stable placement and challenging the competency of his trial counsel. We have dismissed that petition by separate order filed this date.

DISCUSSION

Minor raises a host of arguments in this court, but before we may address them, we must determine whether we may entertain this appeal at all. Both the Karuk Tribe and Michael T. argue that the juvenile court's transfer of Minor's case to the Karuk Tribal Court has rendered the appeal moot. They note that Minor asks this court to reverse the transfer order and to direct the juvenile court to reassume jurisdiction over his dependency case. In simplest terms, the Karuk Tribe and Michael T. contend that because the juvenile court has transferred the case, the tribal court has accepted jurisdiction, and Minor is now a ward of tribal court, the juvenile court has lost all jurisdiction over Minor's dependency.[FN7] They argue that jurisdiction over Minor now resides in the Karuk Tribal Court, and this court has no power to compel that court to return Minor's case to the California courts.

> FN7. In view of the importance of the jurisdictional question, on July 11, 2007, we requested that the parties submit supplemental briefs on this issue. Although the parties have framed the issue as one of mootness and our supplemental briefing request used that term, we believe that the problem is more correctly described as one of jurisdiction. Counsel for Minor, the Karuk Tribe, and Michael T. have filed supplemental briefs. In addition, on July 23, 2007, we appointed counsel for de facto parents Marilyn R. and Jason M., and their counsel has submitted a brief on their behalf which also addresses the jurisdictional issue.

For the reasons that follow, we conclude that the transfer of Minor's case to the courts of a wholly separate sovereign has deprived the California courts of jurisdiction over this case. Simply put, the juvenile court may not act in a case over which it no longer has jurisdiction, and, as we shall explain, we have no power to command the Karuk Tribal Court to return the case to us. Because this loss of jurisdiction makes it impossible for us to render any effective relief to Minor, we must dismiss this appeal. Before turning to the jurisdictional issue that is at the heart of this case, we will first review ICWA's jurisdictional provisions and the principles of tribal sovereignty that guide our

decision.

****280 *907** I. *Transfers to Tribal Courts Under ICWA*

[1] Section 101 of ICWA, codified at title 25 United States Code section 1911, governs Indian tribal jurisdiction over custody proceedings involving Indian children. In custody proceedings involving Indian children who reside or are domiciled within the reservation of the tribe, ICWA generally grants the tribe exclusive jurisdiction. (25 U.S.C. § 1911(a).) In contrast, ICWA "creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights *are to be transferred to the tribal court*, except in cases of 'good cause,' objection by either parent, or declination of jurisdiction by the tribal court." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 36, 109 S.Ct. 1597, 104 L.Ed.2d 29, italics added.) Put another way, ICWA establishes a preference for tribal court jurisdiction in cases of foster care placement or termination of parental rights involving Indian children, even where those children are not domiciled or residing within the tribe's reservation. (See U.S. Dept. of Interior, Bur. of Indian Affairs, Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67583, 67592, col. 1 (Nov. 26, 1979) (hereafter "BIA Guidelines") ["Congress has established a policy of preferring tribal control over custody decisions affecting tribal members"].) In such cases, upon petition of either of the Indian child's parents, the child's custodian, or the child's tribe, the state court, "in the absence of good cause to the contrary, *shall transfer such proceeding to the jurisdiction of the tribe*, absent objection by either parent [.]" (25 U.S.C. § 1911(b), italics added; see also BIA Guidelines, *supra*, at p. 67590, col. 3 ["Upon receipt of a petition to transfer by ... the Indian child's tribe, the court must transfer" unless parent objects, tribal court declines jurisdiction, or good cause exists to deny transfer]; Cal. Rules of Court, rule 5.664(c)(2) [on petition of tribe, parent, or Indian custodian to transfer the case, "the juvenile court *must* transfer the proceedings to tribal jurisdiction unless there is good cause not to do so" (Italics added.)].)

While ICWA clearly establishes a preference for tribal court jurisdiction in custody proceedings involving Indian children and provides certain rules for the transfer of cases to tribal courts, it does not prescribe any particular mechanism or procedure for accomplishing such transfers. (Risling, Cal. Judges' Benchguide: The Indian Child Welfare Act (Cal. Indian Legal Services 2000 ed.) p. 69 ["there is no standard procedure for accomplishing transfer" (bold omitted)].) The BIA Guidelines say only that upon receiving a transfer petition, "the state court shall notify the tribal court in writing of the proposed transfer" and, if the case is transferred, "the state ***908** court shall provide the tribal court with all available information on the case." (BIA Guidelines, *supra*, 44 Fed.Reg. at p. 67592, col. 1.) They further state that transfers should be arranged "as simply as possible consistent with due process" and suggest that "[t]ransfer procedures are a good subject for tribal-state agreements under 25 U.S.C. § 1919." [FN8] (BIA Guidelines, *supra*, at p. 67592, col. 2.)

FN8. Under title 25 United States Code section 1919(a), states and Indian tribes are authorized to enter into agreements "respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes." Minor has requested that we take judicial notice of the "Title IV–E Intergovernmental Agreement Between the California Department of Social Services and the Karuk Tribe of California." We grant the request. (Evid.Code, § 452, subd. (c).) Never-

theless, our review of this agreement has not disclosed any provisions governing the procedure for transferring custody cases from state to tribal courts.

****281** Thus, neither ICWA itself nor the guidelines interpreting it are particularly helpful in determining whether the juvenile court's transfer of this proceeding to the Karuk Tribal Court has completely and irrevocably divested the state court of jurisdiction over Minor's case. Despite this absence of direct, controlling authority, we may answer this question by reference to well-established legal principles concerning the status of Indian tribes and to case law concerning transfers of jurisdiction.

II. *Indian Tribal Sovereignty*

[2] California case law recognizes the unique status of Indian tribes as sovereign entities. (See, e.g., *Agua Caliente Band of Cahuilla Indians v. Superior Court* (2006) 40 Cal.4th 239, 247, 52 Cal.Rptr.3d 659, 148 P.3d 1126 [Indian tribes have been characterized as " 'domestic dependent nations,' or separate sovereigns"]; *Campo Band of Mission Indians v. Superior Court* (2006) 137 Cal.App.4th 175, 181, 39 Cal.Rptr.3d 875 ["an Indian tribe is a sovereign authority"]; *Redding Rancheria v. Superior Court* (2001) 88 Cal.App.4th 384, 387, 105 Cal.Rptr.2d 773 ["An aboriginal American tribe is a sovereign nation"]; see also Cohen, Handbook of Federal Indian Law (2005 ed.) § 4.01[1][a], at p. 207 ["the constitutional recognition of tribes as sovereigns in a government-to-government relationship with the United States has remained a constant in federal Indian law"].) "Indian tribes are not states. They have a status higher than that of states. They are subordinate and dependent nations possessed of all powers [except] to the extent that they have expressly been required to surrender them by the superior sovereign, the United States. [Citation]." (*N.L.R.B. v. Pueblo of San Juan* (10th Cir.2002) 276 F.3d 1186, 1192, fn. 6; accord, ***909***Gavle v. Little Six, Inc.* (Minn.1996) 555 N.W.2d 284, 289 (*Gavle*) ["Indian tribes ... possess a kind of sovereignty superior to that of states but inferior to that of the federal government"].) An attribute of this sovereignty is the power of tribes to establish their own courts, and thus Congress has declared that "Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems." (25 U.S.C. § 3601(4).)

[3] "[A]lthough the tribal court is located within the geographic boundaries of the state, it is not a [California] court; it is the court of an independent sovereign." (*Teague v. Bad River Band* (2000) 236 Wis.2d 384, 612 N.W.2d 709, 717.) The jurisdictional issue in this case arises in large part from this fact. We are not dealing here with a jurisdictional conflict between two California courts. Instead, this case presents a question concerning the allocation of jurisdiction between the courts of two separate and distinct sovereigns—the state of California and the Karuk Tribe. The principle of Indian sovereignty is therefore central to our analysis, because the United States Supreme Court has noted that the sovereignty of the Tribe "provides a backdrop against which the applicable ... federal statutes must be read." (*McClanahan v. Arizona State Tax Comm'n* (1973) 411 U.S. 164, 172, 93 S.Ct. 1257, 36 L.Ed.2d 129.) Bearing the principle of tribal sovereignty in mind, we turn to an analysis of cases that address appellate review of ICWA transfer orders.

****282** III. *The California Courts Have Lost Jurisdiction Over Minor's Case*

In their supplemental briefs, the parties have directed our attention to a number of cases in which appellate courts have reviewed transfer orders under the ICWA. We discuss these cases first to determine whether they can support an exercise of our appellate jurisdiction in this case. We find these cases inconclusive, and we therefore turn next to cases addressing the effect of transfer orders on trial court jurisdiction. As we explain below, our review of the relevant case law indicates that the juvenile court's transfer of jurisdiction to the Karuk Tribal Court has deprived us

of jurisdiction to consider this appeal.

A. *Cases Involving Appellate Review of Transfer Orders under the ICWA*

Our research has disclosed two reported cases in which California courts have clearly entertained appeals from transfer orders under the ICWA. (*In re M.A.* (2006) 137 Cal.App.4th 567, 571, 578, 40 Cal.Rptr.3d 439 [affirming ***910** transfer order to Karuk Tribal Court]; *In re Larissa G.* (1996) 43 Cal.App.4th 505, 508, 516, 51 Cal.Rptr.2d 16 (*Larissa G.*) [reversing transfer order].) In neither case, however, did the courts address whether the transfer of the case to tribal court divested the state courts of jurisdiction. [FN9] As these opinions did not consider the jurisdictional issue, they do not provide any support for an exercise of jurisdiction in this case. (See *American Portland Cement Alliance v. E.P.A.* (D.C.Cir.1996) 101 F.3d 772, 775–776 [concluding that court lacked subject matter jurisdiction to review certain EPA determinations despite two prior cases in which court had exercised jurisdiction to review such determinations; issue of jurisdiction had not been presented in earlier cases].)

> FN9. It is possible that in those cases the courts granted a stay of the transfer order pending appeal to preserve appellate jurisdiction. (Cf. *In re Wanomi P.* (1989) 216 Cal.App.3d 156, 163, 264 Cal.Rptr. 623 (*Wanomi P.*) [apparently reviewing ICWA transfer order to Canadian Indian tribe, but noting that stay of order had been obtained before minor was sent to Canada]; *In re Manuel P.* (1989) 215 Cal.App.3d 48, 72–73, 263 Cal.Rptr. 447 (*Manuel P.*) [juvenile criminal defendant could have preserved right to appeal by requesting that California juvenile court stay order that he return to Mexico].) Neither *In re M.A.* nor *Larissa G.* mentions such a stay, however. In its supplemental brief on the issue of jurisdiction, the Karuk Tribe claims that a stay was granted in the *Larissa G.* case. In support of this claim, the Karuk Tribe has attached to its supplemental brief materials that appear to be taken from the juvenile court and appellate court records in that case. We will not consider the materials because they are not authenticated, and the Karuk Tribe has not requested that we take judicial notice of them. (Cal. Rules of Court, rule 8.252(a)(1).)

Cases from other states are similarly unhelpful. In some cases, although litigants have contended that the transfer of a case from state to tribal court deprives the state courts of jurisdiction, the court has not passed upon the issue. (*In Interest of Armell* (1st Dist.1990) 194 Ill.App.3d 31, 141 Ill.Dec. 14, 550 N.E.2d 1060, 1063, 1069 [affirming transfer order without addressing tribe's argument that state court lost jurisdiction after transfer].) In other cases, the transfer order was stayed pending appeal so that the state courts did not lose jurisdiction over the case before the appeal could be resolved. (*Ex parte C.L.J.* (Ala.Civ.App.2006) 946 So.2d 880, 884 [guardian ad litem's motion for emergency stay granted]; *People in Interest of J.L.P.* (Colo.App.1994) 870 P.2d 1252, 1256 [appellate court granted stay of execution of transfer of jurisdiction pending appeal]; *In re Interest of C.W.* (1992) 239 Neb. 817, 479 N.W.2d 105, 110 [juvenile court stayed transfer of children pending appeal].) In one case, a Montana trial court concluded that it had lost jurisdiction over a juvenile ****283** proceeding once it entered an ICWA transfer order, but the Montana Supreme Court appears to have disagreed because the tribe did not take custody of the children, who remained in a county foster home pending the outcome of the appeal. (*Matter of G.L.O.C.* (1983) 205 Mont. 352, 668 P.2d 235, 236, 237.) The Montana Supreme Court then ***911** vacated the transfer order. (*Id.* at p. 238.) Finally, in *People in Interests of M.C.* (S.D.1993) 504 N.W.2d 598, the South Dakota Supreme Court first granted a temporary stay of the transfer order pending consideration

by the full court, which then denied the motion for stay. (*Id.* at pp. 599–600.) Despite the lack of a stay, the court went on to reverse the transfer order, but it noted that "[a]t the hearing on the request for a stay, the Tribe, through its counsel, assured the trial court that if the transfer was reversed, the Tribe would transfer the case back to state court." (*Id.* at p. 602.) In essence, it appears that the tribe in that case voluntarily agreed to abide by the South Dakota Supreme Court's decision.

These cases do not assist us in determining whether we have the power to review the propriety of an ICWA transfer order *after* the juvenile court has ordered the case transferred to the tribal court, the tribal court has accepted jurisdiction, and the minor has been made a ward of the tribal court. The answer to the question lies instead in an analysis of the effect of the transfer on the juvenile court's jurisdiction.

B. *Transfer of the Case Deprives the California Juvenile Court of Any Further Jurisdiction to Act*

We have found only one published case that directly addresses how an ICWA transfer order affects the jurisdiction of the transferor court. In *Comanche Indian Tribe of Oklahoma v. Hovis* (W.D.Okl.1994) 847 F.Supp. 871 (*Hovis*), reversed on other grounds (10th Cir.1995) 53 F.3d 298, [FN10] an Oklahoma state court had granted a tribal request to transfer a juvenile case to tribal court pursuant to title 25 United States Code section 1911(b). (*Hovis, supra,* at p. 874.) In June 1987, the tribal court issued an order accepting jurisdiction and made the two children at issue wards of the tribal court. (*Ibid.*) Over the next three and a half years, the tribal court conducted a number of custody and related proceedings concerning the children. (*Ibid.*) In February 1991, the children's non-Indian mother asked the Oklahoma state court to vacate the transfer order. (*Ibid.*) The state court did so, concluding ***912** that the transfer order was void because it had been granted over the mother's objection. (*Ibid.*) After the conclusion of the proceedings in Oklahoma state court, the tribe intervened in the proceedings in the tribal juvenile court and received an order holding that the tribal court had exclusive jurisdiction over the matter. (*Id.* at pp. 874–875.) The tribe then filed an action in federal court seeking****284** a declaration that the tribal court possessed exclusive jurisdiction. (*Id.* at p. 875.)

> FN10. The Tenth Circuit reversed the district court's judgment in *Hovis* because the appellate court concluded that collateral estoppel precluded the tribe from relitigating its jurisdictional claims in federal court after those claims had been considered and rejected by the Oklahoma state courts. (*Comanche Indian Tribe of Oklahoma v. Hovis* (10th Cir.1995) 53 F.3d 298, 303–304.) Although the district court's judgment in *Hovis* was reversed, we may still rely on its opinion as persuasive authority. (Cf. *Roe v. Anderson* (9th Cir.1998) 134 F.3d 1400, 1404 [Ninth Circuit opinion that had been vacated by United States Supreme Court remained "viable as persuasive authority"]; *In re Taffi* (9th Cir.1995) 68 F.3d 306, 310 [relying on persuasive authority of Ninth Circuit opinion vacated by United States Supreme Court]; *Orhorhaghe v. I.N.S.* (9th Cir.1994) 38 F.3d 488, 493, fn. 4 [vacated opinion retains value as persuasive authority].)

At the conclusion of its opinion, the *Hovis* court addressed the tribe's contention that the state court lost any jurisdiction that it had over the case when it transferred the matter to the tribal court in 1987. (*Hovis, supra,* 847 F.Supp. at pp. 885–887.) The defendants, including the mother, argued that the original transfer order was void because it was made over mother's objection, and that once the state court found its initial transfer improper, it could reassert jurisdiction to correct its error. (*Id.* at p. 885.) Relying on Oklahoma state law governing transfers of venue, the district court held that the state court lost jurisdiction over the case after it transferred the mat-

ter and transmitted the case file to the tribal court. (*Id.* at pp. 886–887.) Because the record already had been transferred and the tribal court had asserted its exclusive jurisdiction, "the State Court, at [the time the motion to vacate was filed] in 1991, had indeed lost jurisdiction to vacate the prior order." (*Id.* at p. 887.) As a result, the district court concluded that the state court had no jurisdiction to reconsider and vacate the transfer order, and its vacation of that order was void for lack of jurisdiction. (*Ibid.*)

[4] Because *Hovis* appears to be the only case directly on point, we look to other areas of the law for additional guidance. A helpful analogy to the situation before us is the removal of actions from state court to federal court under title 28 United States Code section 1446. Just as states and Indian tribes are separate sovereigns, states are separate sovereigns with respect to the federal government. (E.g., *Heath v. Alabama* (1985) 474 U.S. 82, 89, 106 S.Ct. 433, 88 L.Ed.2d 387.) Removal of an action may therefore be viewed as a transfer of the proceeding from the courts of one sovereign (a state) to the courts of another (the United States). As a consequence, when an action is removed from state court to federal court, the state court loses jurisdiction to proceed further with the matter. As the Ninth Circuit has explained, "[t]he removal of an action to federal court necessarily divests state and local courts of their jurisdiction over a particular dispute." (*Cal. ex rel. Sacramento Metro. Air Quality v. U.S.* (9th Cir.2000) 215 F.3d 1005, 1011.) Thus, "a removal petition deprives the state court of jurisdiction as soon as it is filed and served upon the state court." (*People v. Bhakta* (2006) 135 Cal.App.4th 631, 636, 37 Cal.Rptr.3d 652; accord, *Resolution Trust Corp. v. Bayside Developers* (9th Cir.1994) 43 F.3d 1230, 1238 ["the state court loses jurisdiction upon the filing of the petition for ***913** removal"].) In sum, once the action is removed to the courts of a different sovereign, the state court loses its power to adjudicate the dispute.

[5][6][7] Applying the reasoning of these cases to the appeal before us supports the conclusion that the California courts are deprived of jurisdiction. The Humboldt County Juvenile Court lost jurisdiction over Minor's dependency proceeding once the case was transferred to the Karuk Tribal Court and the latter court accepted jurisdiction. (*Hovis, supra,* 847 F.Supp. at p. 887.) Even if we were to find that the juvenile court erred on the merits (a question we do not reach), we would be unable to grant effective relief to Minor. We are reviewing only the orders of the Humboldt County Juvenile Court, and that court no longer has any jurisdiction over this case. (See Bench Handbook, The Indian Child Welfare Act (CJER 2006) Determining Jurisdiction, § 1.11, p. 9 ["A transfer is a request for the entire case to go to the tribal court for all purposes and *terminates******285*** *state jurisdiction.*" (Italics added.)].) Although we are empowered to issue orders to California juvenile courts, we have no similar power over the Karuk Tribal Court. (See *Matsch v. Prairie Island Indian Community* (Minn.App.1997) 567 N.W.2d 276, 279 ["We know of no legal authority that extends to state courts [ ] appellate rights and powers over an Indian tribal court."].) Unlike the federal courts, we do not have jurisdiction to engage in even limited review of a tribal court's decisions.[FN11] (*Lemke ex rel. Teta v. Brooks* (Minn.App.2000) 614 N.W.2d 242, 245.) Because the Karuk Tribe is a separate sovereign, we could no more compel its courts to comply with our orders than we could compel the courts of a foreign state or nation to do so. (See *Wilson v. Marchington* (9th Cir.1997) 127 F.3d 805, 807 ["Because states and Indian tribes coexist as sovereign governments, they have no direct power to enforce their judgments in each other's jurisdictions."]; *Gavle, supra,* 555 N.W.2d at p. 289 ["absent a grant of federal authority, state courts have no jurisdiction over Indians, Indian tribes or other Indian entities"]; *Anderson v. Engelke* (1998) 287 Mont. 283, 954 P.2d 1106, 1110–1111 [state court has no power to enforce a tribal court judgment within the boundaries of an Indian reservation via state law and execution proceedings]; cf. *In re Baby Girl A.* (1991) 230

Cal.App.3d 1611, 1624, 282 Cal.Rptr. 105 (dis. opn. of Crosby, J.) ["the Orange County Superior Court certainly lacks jurisdiction to compel a court of a sovereign foreign nation to follow a United States statute"].)

FN11. Cases such as *Brown on Behalf of Brown v. Rice* (D.Kan.1991) 760 F.Supp. 1459 (*Rice*), cited by counsel for the de facto parents, are not to the contrary. The federal district court in *Brown* held that it had subject matter jurisdiction to adjudicate a challenge to a tribal court's custody decision, but its jurisdiction arose because "challenges to the exercise of jurisdiction by a tribal court present a question of *federal common law* which can be heard *in a federal court* under the general federal question statute, 28 U.S.C. § 1331." (*Rice, supra,* at p. 1462, italics added.) Nothing in the opinion indicates that state courts possess similar power.

***914** As the foregoing discussion makes clear, we cannot adopt Minor's suggestion that we simply reverse the transfer order and direct the juvenile court to "reassume jurisdiction" over this matter. The case has been transferred to the Karuk Tribal Court, which has exercised its jurisdiction and declared Minor a ward of that court. Even if we were to reverse, neither the juvenile court nor this court has the power to command the courts of a wholly separate sovereign to return the case to us.

C. *ICWA's Grant of Concurrent Jurisdiction to State Courts Does Not Permit State Courts to Retain Jurisdiction After Transfer Is Completed*

Minor argues that the juvenile court's transfer order "bestowed joint or 'concurrent' jurisdiction on the tribal court—the order did not terminate the state judiciary's authority to make orders in the exercise of its concurrent jurisdiction over a California dependent minor." [FN12] Minor appears****286** to interpret ICWA's grant of concurrent jurisdiction to state and tribal courts as permitting a state court to continue to issue orders affecting the dependent juvenile even after the case has been transferred to the tribal court. Minor's argument betrays a basic misunderstanding of the meaning of the term "concurrent jurisdiction."

FN12. It should be obvious that Minor is incorrect in contending that the juvenile court's transfer order "bestowed" jurisdiction on the Karuk Tribal Court. The tribal court's jurisdiction is a product of the Karuk Tribe's inherent sovereignty and Congress's allocation of jurisdiction under ICWA. (See 25 U.S.C. § 1911 [Indian tribe jurisdiction over Indian child custody proceedings]; *Montana v. United States* (1981) 450 U.S. 544, 564, 101 S.Ct. 1245, 67 L.Ed.2d 493 [tribes retain "inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members"]; *United States v. Wheeler* (1978) 435 U.S. 313, 328, 98 S.Ct. 1079, 55 L.Ed.2d 303 [tribe has inherent sovereign power to punish offenses against tribal law by tribe members]; see also Holt & Forrester, Digest of American Indian Law (1990) Jurisdiction, ch. III, p. 50 ["Tribal powers are inherent, not derived from the federal government. As sovereigns, tribes exercise jurisdiction over their own affairs unless some federal exercise of power has altered tribal sovereignty."].)

[8][9][10] When we speak of "concurrent jurisdiction," we refer to a situation in which two (or perhaps more) different courts are authorized to exercise jurisdiction over the same subject matter, such that a litigant may choose to proceed in either forum.[FN13] As the Minnesota Supreme Court explained in a case involving an Indian tribe, "[c]oncurrent jurisdiction describes a situation where two or more tribunals are authorized to hear and dispose of a matter ***915** and the choice of which tribunal is up to the person bring-

ing the matter to court." (*Gavle, supra,* 555 N.W.2d at p. 290.) Contrary to Minor's apparent belief, that two courts have concurrent jurisdiction does *not* mean that both courts may simultaneously entertain actions involving the very same subject matter and parties. Rather, a grant of concurrent jurisdiction means that " 'litigants may, *in the first instance,* resort to either court indifferently.' " (*Mallory v. Paradise* (Iowa 1969) 173 N.W.2d 264, 267, italics added.) The exercise of jurisdiction by one court ordinarily will preclude the exercise of jurisdiction by other courts having concurrent jurisdiction. (*Greene v. Superior Court* (1951) 37 Cal.2d 307, 310, 231 P.2d 821 ["when two or more courts in this state have concurrent jurisdiction, the court first assuming jurisdiction retains it to the exclusion of all other courts in which the action might have been initiated"]; *In re Moreau* (Mo.App.2005) 161 S.W.3d 402, 407.) "This concurrent jurisdiction doctrine has been applied in a number of cases to preclude two courts from exercising jurisdiction at the same time over a case involving the custody of a child." (*Ibid.*)

> FN13. Although courts refer to the jurisdiction granted by ICWA under title 25 United States Code section 1911(b) as "concurrent," in this context the term is perhaps somewhat imprecise. The Ninth Circuit has described this jurisdiction as "referral jurisdiction" and noted that "referral jurisdiction is broader in scope than concurrent jurisdiction, in that referral jurisdiction is concurrent *but presumptively tribal* jurisdiction." (*Native Village of Venetie I.R.A. Council v. Alaska* (9th Cir.1991) 944 F.2d 548, 561, italics in original.)

[11] Thus, although ICWA grants state and tribal courts the power to adjudicate proceedings for foster care placement or termination of parental rights to Indian children not domiciled or residing within the reservation of the Indian child's tribe, this does not mean that *after* a state court transfers a case to tribal court under title 25 United States Code section 1911(b), the state court retains the power to make orders affecting the Indian child. Were we to accept Minor's position, dependent Indian children could be subject to the orders of two wholly separate judicial systems, with no clear means of resolving potential conflicts between those orders. Even if it were within our power to do so, we see no reason to create such a jurisdictional conflict.

Minor's argument also cannot be squared with the manner in which Congress has chosen to allocate jurisdiction ****287** between the state and tribal courts under ICWA. Although state courts do enjoy concurrent jurisdiction to adjudicate custody matters involving Indian children in certain circumstances (25 U.S.C. § 1911(b)), Minor can point to nothing in the statute that would authorize a California court to continue to supervise a dependent minor's case once that case has been transferred to the jurisdiction of the tribal court. Such an argument seems particularly ill-founded in light of Congress's explicit decision to *require* that cases such as this be transferred to tribal jurisdiction save in certain enumerated circumstances. (See 25 U.S.C. § 1911(b).)

IV. *Preserving the Right to Appeal in Cases Subject to Transfer Orders*

We recognize that our disposition of this case will preclude Minor from having his claims on the merits heard by this court. Although counsel for ***916** Minor decries this result as unjust, it is in part a consequence of the tribe's separate sovereignty. (See *Lamere v. Superior Court* (2005) 131 Cal.App.4th 1059, 1063, fn. 2, 31 Cal.Rptr.3d 880 [lack of formal judicial remedy for alleged injustice is "sometimes an inevitable consequence ... of the tribe's sovereign immunity"].) For the benefit of future litigants in cases under the ICWA, we will take this opportunity to comment briefly on how this problem might be avoided.

[12] The loss of jurisdiction that has led us to

conclude that this appeal must be dismissed might have been averted had Minor's counsel sought an *immediate* stay of the transfer order pending Minor's exhaustion of his appellate remedies. (See *Wanomi P., supra,* 216 Cal.App.3d at p. 163, 264 Cal.Rptr. 623; *Manuel P., supra,* 215 Cal.App.3d at pp. 72–73, 263 Cal.Rptr. 447.) The juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child "pending review on appeal or for any other period or periods that it may deem appropriate" (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See *Nuckolls v. Bank of California, Nat. Assn.* (1936) 7 Cal.2d 574, 577, 61 P.2d 927 ["Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court."].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112; see *People ex rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 537, 72 Cal.Rptr. 790, 446 P.2d 790 [where "difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained, justice requires that an appellate court issue a stay order to preserve its own jurisdiction"].) Unfortunately, no stay was sought in this case until well after the transfer to the Karuk Tribal Court was complete.

An appeal need not unreasonably delay an appropriate transfer of the matter to the tribal court. Appeals from judgments in proceedings under Welfare and Institutions Code section 300 "have precedence over all other cases in the court to which the appeal is taken." (Welf. & Inst.Code, § 395, subd. (a)(1).) In addition, to ensure that the matter is heard and decided promptly by the Court of Appeal, the parties may request calendar preference in the appellate court. (Cal. Rules of Court, rule 8.240.) An order granting calendar preference "may include expedited briefing and preference in setting the date of oral ****288** argument." (*Ibid.*) These procedures should ensure that appellate review does not create undue delay.

***917** DISPOSITION

The appeal is hereby dismissed for lack of jurisdiction.

We concur: JONES, P.J., and GEMELLO, J.

Cal.App. 1 Dist.,2007.
In re M.M.
154 Cal.App.4th 897, 65 Cal.Rptr.3d 273, 07 Cal. Daily Op. Serv. 10,258, 2007 Daily Journal D.A.R. 13,264

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